

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

In Re:	}	
	}	
Scott, Michael A.	}	Case No.: 09-11123-M
SSN: xxx-xx-9989	}	Chapter 13
Scott, Patricia J.	}	
SSN: xxx-xx-2723	}	Adversary Case No.: 14-01040-M
Debtors	}	
	}	
PATRICIA J. SCOTT,	}	
Plaintiff,	}	
vs.	}	
	}	
CALIBER HOME LOANS, INC.,	}	
Defendant.	}	

**PLAINTIFF, PATRICIA J. SCOTT'S MOTION TO REOPEN THE RECORD ON
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

The Plaintiff, Patricia J. Scott, hereby moves this Court to reopen the record on the Plaintiff's Cross-Motion for Summary Judgment. In support hereof, the Plaintiff states as follows:

1. The Court entered its ruling and order on the Motion for Summary Judgment filed by Caliber Home Loans, Inc. ("Defendant" or "Caliber") and the Cross-Motion for Summary Judgment filed by Patricia J. Scott ("Plaintiff") on June 17, 2015, (the "Order").
2. The Order denied the Defendant's Motion for Summary Judgment, granted in part the Plaintiff's Cross-Motion for Summary Judgment; and required the Defendant to file an accounting of the mortgage loan by July 1, 2015.
3. The Defendant filed its accounting of the mortgage loan on July 1, 2015, at document 39.

4. The Plaintiff moves this Court to reopen the record on the Plaintiff's Cross-Motion for Summary Judgment to take into consideration the following evidence:

- A. The accounting filed by the Defendant on July 1, 2015, at document 39;
- B. The Chapter 13 Trustee's Amended Notice of Final Cure Payment and Completion of Payments Under the Plan attached hereto and marked as Exhibit 25;
- C. Proof of Claim 17 filed by Household Finance Corporation in the Plaintiff's Chapter 13 case attached hereto and marked as Exhibit 1.
- D. The Loan Modification Agreement dated November 27, 2007, and attached hereto and marked as Exhibit 90.
- E. The Amortization Schedule of the mortgage loan as modified under the Loan Modification Agreement dated November 27, 2007, prepared by the undersigned and attached hereto and marked as Exhibit 91;
- F. The Caliber Mortgage Statement dated April 1, 2014, attached hereto and marked as Exhibit 40; and
- G. The time and billing records of The Colpitts Law Firm attached hereto and marked as Exhibit 92,

(all hereinafter referred to as the "Additional Evidence").

The Additional Evidence shows that the Defendant has violated the discharge injunction of § 524(a) made applicable by § 514(i); that the Plaintiff has suffered substantial actual damages; and that Caliber is in contempt of court. Specifically, the Additional Evidence shows:

1. Based upon the Trustee's Amended Notice of Final Cure, the Trustee's final payment brought the Plaintiff current through the April 2014 payment and the Plaintiff was due to begin payment direct to Caliber with the payment due May 1, 2014. *See Exhibit 25.*

2. Caliber's accounting as filed with the Court continues to apply the Trustee's final payment to March 2014 instead of April 2014 and shows a principal balance following application of the Trustee's final payment of \$146,836.29. *See the Accounting filed by the Defendant herein at document 39.*

3. The accounting filed by Caliber is replete with fees, charges and expenses that were not approved by the Bankruptcy Court or filed in the Bankruptcy Court pursuant to F.R.Bankr.P. 3002.1(c). *See the Accounting filed by the Defendant herein at document 39.*

4. The original promissory note attached the proof of Claim 17 of Household Finance Corporation and the Loan Modification Agreement dated November 27, 2007, provide the information necessary to amortize the mortgage loan. *See Exhibits 1 and 90 respectively.*

5. An amortization of the mortgage loan as modified on November 27, 2007, shows the balance of the mortgage loan following the April 2014 payment to be \$143,899.20. Caliber in its accounting filed in the Court has overstated the balance of the mortgage loan by \$2,937.09. *See Exhibit 91.*

6. Caliber's April 1, 2014, Mortgage Statement improperly states the Plaintiff was delinquent \$2,828.38 and Caliber improperly attempted to collect late charges of \$1,165.15. *See Exhibit 40.*

7. The Plaintiff's attorney's fees to date have exceeded \$12,500.00. *See Exhibit 92.*

The Plaintiff requests this Court reopen the record on the Plaintiff's Cross-Motion for Summary Judgment and make further findings in favor of the Plaintiff on her Cross-Motion for Summary Judgment as follows:

1. After completion of her Chapter 13 Bankruptcy, the balance of the Plaintiff's mortgage loan with Caliber was \$143,899.20 following the April 2014 payment by the Trustee;

2. Caliber has failed to properly apply payments as received and violated the Discharge Injunction under § 524(a);

3. Caliber's accounting of the mortgage loan overstates the loan balance by \$2,937.09 following receipt of the Chapter 13 Trustee's final payment in April 2014;

4. Caliber improperly attempted to collect late charges of \$1,165.15 following the Plaintiff's completion of her Chapter 13 Bankruptcy;

5. Caliber improperly attempted to collect past due payments totaling \$2,828.38 following the Plaintiff's completion of her Chapter 13 Bankruptcy;

6. The overstated balance, improper late fees, and past due payments constitute actual damages suffered by the Plaintiff and those actual damages total \$6,930.62;

7. The Plaintiff has incurred attorney's fees and costs totaling \$12,978.90; and

8. The Plaintiff is entitled to punitive damages equal to her actual damages and attorney's fees and costs.

Submitted by:

/s/ Gregory T. Colpitts

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Attorney for Plaintiff

July 23, 2015

Date